IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIRST DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

-

WRIT PETITION NO : 15641 of 2004

Between:

1 Anil Kumar Aggarwal, S/o Shri Om Prakash Aggarwal,
r/o 10-3-3/14, East Marredpally, Secunderabad.
2 Abhishek Aggarwal S/o Shri Anil Kumar Aggarwal,
r/o 10-3-3/14, East Marredpally, Secunderabad.

..... PETITIONERS

AND

1. The Joint Registrar-OSD, Charminar Co-op Urban bank Ltd., 11-3-161, III floor, Nampally Branch, New Mallepally, Hyderabad-1
2. The Charminar Co-operative Urban Bank Ltd., Administrative Office, 5-9-3, First Floor, Opp Assembly Hall, Saifabad, Hyderabad rep. by Authorised officer.
3. The A.P. Cooperative Tribunal, Nampally, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue any Writ or direction or orders more particularly one in the nature of Writ of Mandamus by declaring the notice of attachment of immovable property dated 06-08-2004 in form No.7 Rule 52 (II) (d) in EP 82 of 2004 issued by the 1st respondent in directing to pay on or before 23-08-2004 as illegal and arbitrary as appeal CTA No. 89 of 2004 is pending before the A.P. Co.operative Tribunal, Hyderabad and consequently set aside the same.

Counsel for the Petitioner: MR.K.V.SIMHADRI

Counsel for the Respondent NO.1 and 2: MR.N.RAM MOHAN RAO.

Counsel for the Respondent No.3: GP FOR COOPERATION

The Court made the following :

ORDER:

Heard the learned counsel for the petitioners and the learned Standing counsel, Sri N.Ram Mohan Rao, appearing for the second respondent-Bank.

At the instance of the 2nd respondent-Bank, proceedings were initiated against the petitioners and others for passing an award for recovery of Rs.67,00,841/- together with interest and ultimately vide ARC.No.39204 of 2002 an award has been passed by the 1st respondent herein under Section 71(1) of the A.P. Co-operative Societies Act, 1964. The petitioners preferred an appeal against the said award before the A.P. Co-operative Tribunal, Hyderabad, being C.T.A.No.89 of 2004, along with an application seeking stay of all further proceedings, pursuant to the sale certificate, dated 05-01-2004. The Tribunal having heard both the parties, passed an order dated 05-05-2004 in I.A.No.549 of 2004, staying the order under Appeal subject to the condition that the petitioners shall pay the amount in 35 installments continuously. As per the stay order, the first installment shall be payable equal to the 5 installments amounts on or before 16-06-2004, and the remaining installments shall be payable on or before 14th of every English calendar month. A default clause has also been added stating that if the petitioners fail to pay two installments continuously, the order shall stand vacated.

The petitioners state that though they paid Rs.5 lakh, in spite of best efforts, they could not pay the total amount payable towards the first installment as per the direction of the Tribunal. Though they are making efforts to regularize the installments, in view of the default already committed, it appears that the first respondent issued the impugned notice dated 06-08-2004 in Form No.7 under Rule 52 (11)(d) directing the petitioners to pay the entire amount of Rs.67,00,841/- by 23-08-2004, failing which the immovable property placed under attachment will be brought to sale. Aggrieved by the same, this writ petition is filed.

Heard the learned counsel for the petitioners and the learned counsel for the respondents.

The learned counsel for the petitioners submits that the petitioners are making the best efforts to regularize the installments upto August and the default committed by them with regard to the 1st installment payable by 14-06-2004 was only due to the reason that it comprises of five installments amount to the tune of about Rs.9 lakh. The learned counsel pleads that the petitioners never intended to avoid payments and if reasonable time is granted, all the installments will be regularized and in the

meanwhile, if the property is brought to sale, the petitioners will stand to suffer irreparable injury.

Having regard to the facts and circumstances of the case, I deem it appropriate to dispose of the writ petition, with a direction to the respondents 1 and 2 not to take any coercive steps against the petitioners, including the sale of the property attached, in pursuance of the impugned notice of attachment dated 06-08-2004, subject to the condition that the petitioners clear the entire arrears of installments payable in terms of the order in I.A.No.549 of 2004 dated 5-5-2004, within eight weeks from today and continue to pay the further installments payable by 14th of every month in terms of the order of the Tribunal dated 05-05-2004, in I.A.No.549 of 2004. It is made clear that till the arrears are paid within the time fixed above, the attachment shall continue.

Subject to the above modification, the order dated 5-5-2004, in I.A.No.549 of 2004, in C.T.A. No.89 of 2004 on the file of the A.P. Co-operative Tribunal, Hyderabad shall remain operative. Apart from the default clause imposed by the Tribunal, it is made clear that in case the petitioners fail to comply with the order of this Court for payment of arrears, it is open to the second respondent-Bank to proceed further with the impugned notice dated 06-08-2004, in accordance with law.

Writ petition is accordingly disposed of. No costs.

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01-09-2004

vs

To

1 The Joint Registrar-OSD, Charminar Co-op Urban bank Ltd., 11-3-161, III floor, Nampally Branch, New Mallepally, Hyderabad-1
2 The Authorised officer, Charminar Co-operative Urban Bank Ltd., Administrative Office, 5-9-3, First Floor, Opp Assembly Hall, Saifabad, Hyderabad.
3 The A.P. Cooperative Tribunal, Nampally, Hyderabad.

4. 2CCs to the G.P. for Co.operation, High Court Buildings, High Court of A.P., Hyderabad. (out).

5. 2CD copies.